

DATE: July 21, 2006

TO: DIRECTIVES POINTS OF CONTACT

FROM: ROBIN TOPOLSKI, ACTING DIRECTOR  
OFFICE OF INFORMATION MANAGEMENT MA-44

SUBJECT: REDLINE/STRIKEOUT FOR Draft DOE M 442.1-1, *Differing Professional Opinions Manual for Technical Issues Involving Environment, Safety or Health*

In accordance with the new Directives procedures, a redline/strikeout of the Manual has been posted to RevCom to allow interested parties to see the cumulative effect of changes produced during coordination.

Draft DOE M 442.1-1 was initially coordinated in RevCom beginning in January 2006. In May 2006, the draft Manual was sent out for a second review and comment because it was expanded to include contractors. The writer has responded to all comments and incorporated accepted changes into the directive. To review the redline/strikeout, please go to <http://www.directives.doe.gov/rcLogin.html>.

**Reviewing Instructions:**

1. **THIS IS NOT AN OPPORTUNITY TO SUBMIT NEW COMMENTS.**
2. **Only** comments with specific objections to the changes in the directive will be addressed.
3. Headquarters Directives Points of Contact have until **August 1, 2006**, to review the redline/strikeout and compile and submit comments/concurrence/nonconcurrence through RevCom.
4. Reviewers in the field are asked to meet assigned internal organizational deadlines.
5. After you have reviewed the redline/strikeout, please follow the case below that corresponds to your situation:

If you:	Then:
submitted a major comment and agree with the incorporation of your comments,	go into RevCom and concur.
submitted a major comment and do not agree with the incorporation of your comments,	go into RevCom and nonconcur, and justify the reason for your nonconcurrence.
did not comment, but the incorporation of others' comments may have an adverse impact on your organization's mission,	go into RevCom and justify how this directive will have an adverse impact on your organization's mission.
did not comment, and are still satisfied with the directive,	no action is necessary.

# **DIFFERING PROFESSIONAL OPINIONS MANUAL FOR TECHNICAL ISSUES INVOLVING ENVIRONMENT, SAFETY OR HEALTH**

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**U.S. DEPARTMENT OF ENERGY**  
Office of Environment, Safety and Health



## **DIFFERING PROFESSIONAL OPINIONS MANUAL FOR TECHNICAL ISSUES INVOLVING ENVIRONMENT, SAFETY, OR HEALTH**

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### **1. PURPOSE.**

This Manual establishes a Department of Energy (DOE) Differing Professional Opinion (DPO) Process to facilitate dialogue and resolution on DPOs from employees<sup>1</sup> for technical issues involving environment, safety, and ~~or~~ health (ES&H). This process supplements DOE P 442.2, *Differing Professional Opinions*, dated XX-XX-06. It is not intended to circumvent other avenues for resolving technical disagreements but rather to supplement existing processes. In particular, this process supplements the DOE Employee Concerns Program established in [DOE O 442.1A, Department of Energy Employee Concerns Program](#), by providing a specific process for assessing and addressing technical issues related to ES&H.

The process in this Manual is limited to addressing DPOs on technical issues related to ES&H for DOE facilities and activities.

The Department recognizes that it takes courage to step outside current opinion and raise an issue and it is committed to ensuring that DPOs can be raised without fear of retaliation and are resolved in a timely and effective manner. Unless the disclosure is specifically prohibited by law, employees are encouraged to engage in open, frank, and unrestricted professional discussions across organizational boundaries on technical issues, particularly those related to ES&H. Specific whistleblower protection is provided for Federal employees in 5 United States Code (U.S.C.) § 2302, *Prohibited Personnel Practice* and for DOE contractors in [10 CFR Part 708, DOE Contractor Employee Protection Programs](#), and in [Section 211 of the Energy Reorganization Act, as amended, codified at 42 U.S.C. Sec. 5821 which provides DOE and DOE contractor whistleblower protection](#).

This process may highlight ES&H concerns which may require DOE or contractor managers to stop or curtail work operations as authorized to place the facility or activity in a safe condition until the DPO issue has been resolved.

### **2. CANCELLATIONS. None.**

### **3. APPLICABILITY.**

- a. DOE Elements. Except for the exclusions in paragraph 3d, this Manual applies to all Departmental elements and DOE Federal employees with respect to DPOs on technical issues relating to ES&H. (See Attachment 1 for a complete list of Departmental elements.) This Manual automatically applies to Departmental elements created after it is issued.

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<sup>1</sup> For the purposes of this Manual, the term “employees” is defined consistent with DOE O 442.1A as any person working for DOE, including NNSA or a DOE contractor or subcontractor, on a DOE project.

The Administrator of the National Nuclear Security Administration (NNSA) will ensure that NNSA employees comply with their respective responsibilities under this Manual.

- b. Contractors. The CRD (Attachment 2) sets forth requirements that are to be applied to contractors with responsibility for the design, construction, management, operation, decontamination, decommissioning, or the demolition of DOE sites or facilities. ~~Contractor compliance with the CRD will be required to the extent set forth in their contracts.~~

~~c. Employees. This Manual applies to DPOs on technical ES&H issues raised by employees. For the purposes of this Manual, the term “employees” is defined consistent with DOE O 442.1A as any person working for DOE, including NNSA or a DOE contractor or subcontractor, on a DOE project.~~

- c. Exclusions. The provisions of this Manual do not apply to:
- (1) Activities conducted under the authority of the Director, Naval Nuclear Propulsion Program, pursuant to Executive Order 12344, ~~as set forth in Public Laws 98-525 and 106-65 provided in 42 U.S.C. Sec. 2511.~~
  - (2) Activities of the Bonneville Power Administration (BPA) in accordance with Secretarial delegation Order Number 00-033.00A to the BPA Administrator and Chief Executive Officer, dated 9-27-02.
  - (3) Administrative, contract, or personnel related issues except to the extent that they are directly related to technical issues regarding ES&H.
  - (4) Concerns submitted anonymously or with requests for confidentiality.

#### 4. REQUIREMENTS

See Attachment 3, “Differing Professional Opinion Process,” and its subparagraphs for the DPO process. The DPO process in Attachment 3 includes both requirements and guidance. The verbs “must” and “should” are used throughout the attached process to denote requirements and guidance. “Must” is used for requirements. “Should” is used for guidance.

#### 5. RESPONSIBILITIES.

- a. Under Secretaries (Deputy Secretary where there is no Under Secretary).
- (1) Within 10 working days of acceptance of the DPO assign a Secretarial Officer, Deputy Administrator (for NNSA facilities and activities), or field office manager (FOM) to be responsible for the final decision on a DPO. Where practicable, the individual assigned responsibility for the final

decision should be at a level above or independent from the manager who made the contested decision.

- (2) Approve any extensions of the review period for DPOs beyond the initial 30 calendar day extension.
  - (3) Make decisions on any appeals to DPO Final Decisions.
  - (4) Stop or curtail work as necessary to ensure that a facility or activity is in a safe condition until DPO issues have been resolved.
  - (5) Provide annual notice to all employees of the availability of the process and encourage its use where appropriate.
- b. Under Secretary of Energy for Nuclear Security/NNSA Administrator (in addition to the responsibilities listed for the Under Secretaries) assigns a **DPO manager (DPOM)** for NNSA.
- c. Assistant Secretary for Environment, Safety and Health (EH).
- (1) Assigns an EH **DPO-manager (DPOM)** for offices other than NNSA.
  - (2) Maintains the DPO Policy and Manual.
- d. Secretarial Officer, Deputy Administrator, or Field Office Manager Assigned Responsibility for Final Decision on a DPO.
- (1) Within 10 working days of being assigned; a DPO, appoints an ad hoc panel of experts to review the DPO issue and provide recommendations.
  - (2) Provides technical assistance and/or support to the ad hoc panels, when needed.
  - (3) Reviews reports from ad hoc panels.
  - (4) Makes and documents the Final Decision within 10 working days of receiving ~~the-an~~ ad hoc panel report, including the appropriate actions to take on assigned DPOs, including the bases for the Final Decision.
  - (5) Sends copies of the Final Decision to submitter, the submitter's management, the appropriate DPOM (or both DPOMs), ad hoc panel members, and any individuals or organizations tasked with followup actions or implementation.
  - (6) Approves extensions to review periods for up to 30 calendar days and requests additional extensions from the Under Secretary (Deputy Secretary where there is no Under Secretary) when needed.

- (7) Maintains records on DPOs until decisions have been documented then sends records to the appropriate DPOM (or both DPOMs) for record keeping and followup.
  - (8) Meets with employees who are not satisfied with DPO decisions within 10 working days of the request to meet, and attempts to resolve issues before the Final Decision is appealed.
  - (9) Where authorized, stops or curtails work as necessary to ensure that facilities and/or activities are in a safe condition until DPO issues have been resolved; where not authorized, informs the appropriate management level that work may need to be stopped or curtailed.
  - (10) Notifies contracting officers of contracts affected by the requirements of this directive so the CRD will be included in affected contracts.
- e. General Counsel or NNSA General Counsel assigns a member to the ad hoc panel to review legal issues of the DPO if requested by the assigned Secretarial Officer, Deputy Administrator, or FOM. ~~Local-Field~~ counsel may also be used when requested by the Secretarial Officer, Deputy Administrator, or FOM and approved by the General Counsel or NNSA General Counsel.
- f. Chief of Nuclear Safety and Chief, Defense Nuclear Safety.
- (1) Performs a sample review of DPOs biennially from the list provided by the DPOM.
  - (2) From the review, determines the success of the DPO process and the follow-up actions.
  - (3) Provides to each of the Under Secretaries a report on the findings of the assessment and any pertinent recommendations to address findings or deficiencies.
- ~~g. Director of the Office of Price-Anderson Enforcement assigns a member to the ad hoc panel to review Price-Anderson enforcement issues of the DPO if requested by the assigned Secretarial Officer, Deputy Administrator, or FOM.~~
- g. Differing Professional Opinion Managers.
- (1) Act as ombudsmen for the DPO submitter and ensure that the views of all persons involved in the process are respected.
  - (2) Work with the submitter to craft the DPO to fit within the process where appropriate.

- (3) Screen DPO submittal within 10 working days of receipt to verify that it meets the DPO process criteria and that sufficient information has been provided to initiate the review.
  - (a) Accept DPO submittals within the scope of the DPO process and with sufficient information to initiate the review.
  - (b) Return submittals outside the scope of the DPO process or with insufficient information to the submitters with an explanation of why it is being returned.
  - (c) Refer issues submitted anonymously or with requests for confidentiality to the Employee Concerns Program.
  - (d) Refer issues related to wrongdoing to the Office of Inspector General.
- (4) Concurrent with the acceptance of a DPO, assign a DPO control number, open a file, send an acknowledgement to the submitter, and initiate a memorandum from the appropriate Under Secretary (or Deputy Secretary where there is no Under Secretary) assigning responsibility for the DPO to the Secretarial Officer, Deputy Administrator (for NNSA facilities and activities), or the FOM.
- (5) Where possible, request available supporting documentation from the DOE or contractor manager who made the decision or established the position that is being contested by the employee in the DPO and provide it to the assigned Secretarial Officer, Deputy Administrator, or FOM, as well as to the ad hoc panel.
- (6) Track followup actions for the DPO to completion and keep interested DOE parties informed about progress.
- (7) Maintain DPO records for at least 75 years from the date of submittal.
- (8) Track progress of DPOs and send reminder memos for actions that are more than 5 working days behind schedule.
- (9) If a DPO involves a situation where work may need to be stopped or curtailed to ensure that the facility or activity is in a safe condition until the matter is resolved, inform the manager at the appropriate level authorized to stop or curtail the work.
- (10) Biannually submit to the Chief of Nuclear Safety and the Chief, Defense Nuclear Safety lists of—
  - (a) DPO actions initiated over the past two years,



- (b) DPOs for which follow-up actions were completed over the past two years,
  - (c) DPOs with follow-up actions items still outstanding, and
  - (d) ~~The~~Names of the assigned managers for each of the DPOs listed.
- (11) Support Chief of Nuclear Safety and Chief, Defense Nuclear Safety, requests for documentation from the DPO records.

h. Ad Hoc Panel Chairperson.

- (1) Schedule and lead ad hoc panel meetings and phone calls.
- (2) Assume responsibility for forwarding written documents from the ad hoc panel as required.
- (3) Ensure the positions of all members of the ad hoc panel are represented in the final report including any dissenting opinions.
- (4) Request additional technical assistance through the assigned Secretarial Officer, Deputy Administrator, or FOM if necessary.

i. Ad Hoc Panels.

- (1) Review DPOs to determine whether enough information has been supplied to undertake a detailed review of the issue.
- (2) Within 10 working days of assignment, schedule and conduct meetings with the submitter to discuss the scope of the issues.
- (3) Establish a schedule of milestones for the disposition of the DPO.
- (4) Conduct detailed reviews of the issues being brought forward and/or conduct any record reviews or interviews or hold any discussions deemed necessary to provide a complete, objective, independent, and impartial review.
- (5) Ensure reviews are conducted in an independent fashion to the extent possible.
- (6) Provide a written report, including recommendations and any dissenting opinions, to the assigned Secretarial Officer, Deputy Administrator, or FOM regarding the disposition of the issues presented in the DPO with copies to the appropriate DPOM (or DPOMs) within 30 days of assignment of the DPO (unless an extension is approved).

j. Employees/Submitters ~~(including contractor and subcontractor employees)~~.

- (1) First seek resolution of the issue through available processes (e.g., discussions with first-line supervisors or through local DPO or review and comment processes); but when needed, use this DPO process to ensure that any significant technical ES&H issue for a DOE facility or activity is addressed properly .
- (2) Submit DPOs to the DPOM when necessary to raise problems on technical issues related to ES&H. Submittals should include all information indicated in Attachment 3 of this Manual including attached reference documents where practicable and appropriate.
- (3) Meet with ad hoc panels and DOE managers as requested and provide information as known to support a thorough review of the concern.
- (4) File appeals with the appropriate Under Secretary (or Deputy Secretary where there is no Under Secretary) as necessary with copies to the appropriate DPOM and to the assigned Secretarial Officer, Deputy Administrator, or FOM.

k. All DOE Managers.

- (1) Encourage employees to engage in open, frank, and unrestricted professional discussions across organizational boundaries on technical issues related to ES&H, unless the disclosure is specifically prohibited by law.
- (2) Ensure that the views of all persons involved in the process are respected.
- (3) Protect employees from retaliation in any form for reporting DPOs.
- (4) Report to the appropriate DPOM when requested on the status of assigned implementation actions resulting from the DPO resolution and on the closure of these implementation actions.

6. CONTACT. Questions concerning this Manual should be addressed to the Office of Nuclear and Facility Safety Policy at XXX-XXX-XXXX.

BY ORDER OF THE SECRETARY OF ENERGY:

CLAY SELL  
Deputy Secretary



**DEPARTMENTAL ELEMENTS TO WHICH DOE M 442.1-1 IS APPLICABLE**

Office of the Secretary  
Office of the Chief Financial Officer  
Office of the Chief Information Officer  
Office of Civilian Radioactive Waste Management  
Office of Congressional and Intergovernmental Affairs  
Office of Counterintelligence  
Departmental Representative to the Defense Nuclear Facilities Safety Board  
Office of Economic Impact and Diversity  
Office of Electricity Delivery and Energy Reliability  
Office of Energy Efficiency and Renewable Energy  
Energy Information Administration  
Office of Environment, Safety and Health  
Office of Environmental Management  
Office of Fossil Energy  
Office of General Counsel  
Office of Hearings and Appeals  
Office of Human Capital Management  
Office of the Inspector General  
Office of Intelligence  
Office of Legacy Management  
Office of Management  
National Nuclear Security Administration  
Office of Nuclear Energy, Science and Technology  
Office of Policy and International Affairs  
Office of Public Affairs  
Office of Science  
Secretary of Energy Advisory Board  
Office of Security and Safety Performance Assurance  
Southeastern Power Administration  
Southwestern Power Administration  
Western Area Power Administration



**CONTRACTOR REQUIREMENTS DOCUMENT**  
**DOE M 442.1-1, *DIFFERING PROFESSIONAL OPINION MANUAL FOR TECHNICAL***  
***ISSUES INVOLVING ENVIRONMENT, SAFETY, OR HEALTH***

1. FLOWDOWN REQUIREMENTS. Regardless of the performer of the work, the contractor is responsible for compliance with the requirements of this Contractor Requirements Document (CRD). The contractor is responsible for flowing down the requirements of this CRD to subcontractors at any tier to the extent necessary to ensure the contractor's compliance with the requirements and the safe performance of work.
2. SUPPORT THE DPO PROCESS. The Department of Energy (DOE) has established a Differing Professional Opinion (DPO) Process in DOE Manual (M) 442.1-1 to facilitate dialogue and resolution on DPOs from employees<sup>2</sup> for technical issues involving environment, safety, and health (ES&H). In support of the effective implementation of the DOE DPO process, contractors and subcontractors are required to –
  - a. Assist DOE as requested in the resolution of DPOs;
  - b. Ensure that contractor and subcontractor employees are advised at least annually that they have the right to report concerns on technical issues relating to ES&H through the DPO process;
  - c. Encourage their employees to raise technical issues related to ES&H, use the DPO process when appropriate, and provide them reasonable time and resources to use the DPO process;
  - d. Protect their employees from retaliation in any form for reporting DPOs; and
  - e. Report to the DOE when requested on the status of assigned implementation actions resulting from the DPO resolution and on the closure of these implementation actions.
3. SUBMITTING DPOS. Contractors and subcontractors, ~~as well as their individual employees,~~ who believe that they have knowledge of a significant ~~issue or activity related to~~ technical issues regarding ES&H of a DOE facility or activity that is not being properly addressed should raise the issue to ensure it is properly considered in a timely manner. Before using the DPO process to address an issue they should first attempt to resolve the issue through other available processes (e.g., discussions with the DOE line managers, existing complaint or resolution processes, review and comment processes, and/or local DPO processes). If they have attempted to use available processes to address a technical issue related to ES&H satisfactorily, but they believe that the current

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<sup>2</sup> For the purposes of the DPO process “employee” is defined as any person working for DOE, including NNSA or a DOE contractor or subcontractor on a DOE project.

position could have a significant negative impact on protection of the ~~environment, safety, and/or ES&H~~health of employees or members of the public then they may initiate a DPO. Contractors and subcontractors, as well as their employees, who submit DPOs assume the role of the “submitter” in the DPO process with the following responsibilities:

- a. Submit DPOs to the applicable DOE DPO manager (DPOM). Submittals should include all information indicated in the DPO process defined in **Section 2 to Attachment 3** to DOE M 442.1-1 including attached reference documents where practicable and appropriate.
- b. Meet with ad hoc panels and DOE managers as requested and provide information as known to support a thorough review of the concern.
- c. File appeals with the appropriate DOE Under Secretary (or Deputy Secretary where there is no Under Secretary) as necessary **no later than 21 working days after the Final Decision is issued**, with copies to the appropriate DPOM and to the assigned Secretarial Officer, Deputy Administrator, or field office manager.

## DIFFERING PROFESSIONAL OPINION PROCESS

Employees who believe that they have knowledge of a significant ~~issue or activity related to~~ technical issues regarding environment, safety, ~~and/or~~ health (ES&H) of a Department of Energy (DOE) facility or activity that is not being properly addressed should raise the issue to ensure it is properly considered in a timely manner.

### 1. FIRST, USE AVAILABLE PROCESSES.

- a. Before initiating the Differing Professional Opinion (DPO) Process the employee should first attempt to resolve the issue through available processes (e.g., discussions with the first-line supervisors or other managers, review and comment processes, and/or local DPO processes). In the free and open exchange of technical issues, differences of opinion are common and generally not part of the DPO process. In addition, there may be multiple solutions to a technical issue which would serve to adequately protect ES&H.
- b. If the employee has attempted to use available processes to satisfactorily address a technical issue related to ES&H and the employee believes that the current position could have a significant negative impact on protection of the ~~environment, safety, and/or health~~ ES&H of employees or members of the public then the employee should initiate a DPO.

### 2. PREPARE AND SUBMIT A DPO.

- a. The employee (hereinafter referred to as the submitter) must prepare a written document with the following information: <sup>1</sup>
  - (1) *What is the issue?* A summary of the prevailing staff view, the existing management decision or stated position, or the proposed or established Department practice involving the technical issues.
  - (2) *What is your recommended action?* A description of the submitter's views and how they differ from any issues discussed in item (1).
  - (3) *What could happen if there is no change in position?* If possible, the submitter should include an assessment of the consequences if the submitter's position is not adopted by the Department. This section should include a sound technical basis for the concern. The consequences discussed should be in terms of effects to worker safety or health, or protection of the public or environment from DOE facilities or activities.

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<sup>1</sup> See Appendix A for an example of an acceptable format for DPO submissions and Appendix B for the simplified steps of the DPO process. These items correspond to the questions in the Sample DPO Submittal Form in Appendix A.



- (4) *Who would you recommend to be assigned to the ad hoc panel to review the DPO?* The submitter may suggest the names of three potential ad hoc panel members, listed in priority order, or a statement that names of potential ad hoc panel members will not be provided.<sup>2</sup>
    - (5) *What should panel members read to help them resolve the issue?* The submitter should include a list of the relevant documents that support the DPO or should be read for a thorough independent review (e.g., sections of safety bases documents, assessments, reports). The submitter should either provide a copy of the documents or provide enough information to enable a reader to obtain them ~~easily~~-easily.<sup>3</sup>
    - (6) *What else have you tried to resolve this issue and what were the results?* The submitter should include a discussion of the ~~other means~~available processes (review and comments, discussions with technical personnel and management, local DPO processes, etc.) used to resolve the issue before initiating this DPO and what the outcome was if known.
  - b. To determine which DPOM should handle the DPO, indicate whether the DPO involves—
    - (1) Only NNSA facilities and/or activities,
    - (2) Only non-NNSA facilities and/or activities, or
    - (3) Both NNSA and non-NNSA facilities and/or activities.
3. SUBMIT THE DPO.
  - a. DPOs for National Nuclear Security Administration (NNSA) facilities and activities should be submitted to the NNSA DPOM.
  - b. DPOs for facilities and activities other than NNSA should be submitted to the Office of Environment, Safety and Health DPOM.
  - c. DPOs that involve both NNSA and non-NNSA activities should be submitted to both DPOMs and the DPOMs will work with management to determine whether one or two reviews should be performed.

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<sup>2</sup> The submitter may consult with the exclusive bargaining unit representative or the DPOM, if appropriate, to nominate knowledgeable individuals who are willing to serve as panel members.

<sup>3</sup> Copyrighted documents which are generally available to the public such as consensus codes and standards should not be attached, nor should published DOE directives or technical standards which are available through the DOE web pages. For such documents the submitter must include complete references of specific sections with a brief statement regarding the relevance of the document to the issue being raised. Copies of other documents may be provided in electronic or paper format.

- d. DPOs may also enter the DPO process through issues submitted to the Employee Concerns Process and forwarded to the appropriate DPOM. In such cases, the DPOM must contact the submitter for any additional information required to accept and review the issue consistent with this process.

4. SCREEN AND ACCEPT THE DPO

- a. The DPOM must screen the submission to ensure that it meets the criteria for the DPO process.<sup>4</sup> Issues that are not generally within the scope of the DPO process and that will not be reviewed according to this process include the following:
  - (1) issues that are administrative in nature (such as procedures for review and comment or Price-Anderson enforcement procedures),
  - (2) personnel issues (such as performance elements, evaluations and ratings or work assignments by management),
  - (3) issues that relate to contracts not relating to technical ES&H issues (such as fees or contract negotiations),
  - (4) issues related to collective bargaining,
  - (5) issues that should be addressed through the grievance process or personnel appeal procedures,
  - (6) issues that relate to wrongdoing (the DPOM must refer these to the Office of Inspector General),
  - (7) issues submitted anonymously or for which confidentiality is requested, and
  - (8) issues that have been considered and already addressed under this process unless significant new information is available.
- b. If the DPOM determines that the issue is outside the scope of the DPO process, the DPOM ~~should~~**must** inform the submitter and, if appropriate, suggest the appropriate process for submittal.
- c. If part of the DPO is outside the scope of the DPO process, the DPOM must discuss the issue with the submitter to determine whether certain aspects of the DPO should be addressed by the DPO process. If so, the DPOMs must work with

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<sup>4</sup> An example of an issue that would not be included in this process would be an employee who could not perform a task because of a back problem. Although this issue is related to the health of the employee, it is not related to a technical issue and should be handled as a personnel issue. An example of an issue that could be addressed through the DPO process would be an operation that could result in an interaction of chemicals that would result in a chlorine release and exposure to workers that has not been properly addressed in safety analysis and/or design.

the submitter to craft a submission that addresses only the limited aspects appropriate for the DPO process.<sup>5</sup>

- d. If the DPO is appropriately covered by the DPO process, the DPOM will verify that sufficient information has been provided to initiate the review. If not, the DPOM will return the submittal to the submitter with documentation identifying the additional information needed. Examples of insufficient information include (1) missing name, email, or phone number and (2) an unclear statement of the issue such that the Under Secretary would not be able to determine to which office the DPO should be assigned.
- e. If the issue is within the scope of the DPO process and sufficient information has been provided to initiate the review, it will be accepted. The intent of this review is to identify information that is needed to be able to understand the issue and initiate the review. The DPOM should not use the acceptance process to slow down or stop the review. The review should proceed as soon as enough information has been provided to understand the issue.
- f. In cases where imminent ~~safety-danger~~ is involved the acceptance process should proceed in parallel with forwarding the available information to management to initiate a review and take any necessary actions to protect individuals and property. The DPOM may need to contact management for immediate action even before the DPO is formally submitted.
- g. The acceptance review must be completed by the DPOM within 10 working days of receipt of the DPO.
- h. Concurrent with the acceptance of a DPO, the DPOM must—
  - (1) assign a DPO control number;
  - (2) open a file;
  - (3) send an acknowledgement of the acceptance of the DPO for action to the submitter;
  - (4) initiate a memorandum for the appropriate Under Secretary's signature (Deputy Secretary where there is no Under Secretary) to assign the DPO to the Secretarial Officer, Deputy Administrator (for NNSA facilities and activities), or FOM, as appropriate; and
  - (5) request supporting documentation from the DOE or contractor manager who made the decision or established the position that is being contested

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<sup>5</sup> An example of such an issue might be a claim of retribution regarding an employee who complained to management about substandard components. The review of the substandard components could progress through the DPO process, while the retribution issue should be addressed through an alternate process.

by the submitter in the DPO and provide that information to the assigned Secretarial Officer, Deputy Administrator, or FOM, as well as to the ad hoc panel.

- i. The Under Secretary (or Deputy Secretary where there is no Under Secretary) must assign the DPO to a Secretarial Officer, Deputy Administrator (for NNSA) or field office manager (FOM) within 10 working days of acceptance of the DPO.
- j. If the DPO covers issues that are already undergoing staff review or inspection activity, the DPOM must refer the DPO back to the submitter and communicate the submitter's issues to the senior manager overseeing the staff's review or the inspection activity to ensure that the submitter's issues are taken into consideration.

5. APPOINT AN AD HOC PANEL.

- a. Within 10 working days of receipt of the file from the DPOM, the assigned Secretarial Officer, Deputy Administrator, or FOM must appoint an ad hoc panel of experts to conduct a thorough review of the DPO.
- b. The assigned Secretarial Officer, Deputy Administrator, or FOM must send a copy of the memorandum assigning the panel members to the appropriate DPOM (or both DPOMs) and the submitter of the DPO.
- c. No one in a position of authority over the submitter should be appointed to the ad hoc review panel. In addition, to the extent possible, the ad hoc panel should not involve individuals who have directly participated in the formulation of the DOE position that is at issue or have a direct and personal or financial interest in the outcome. If it is desirable for a person from outside DOE to serve as a member of the DPO ad hoc review panel or as a consultant to the panel, the requirements of the Federal Advisory Committee Act must be met.
- d. The ad hoc panel may consist of as few as one person (provided that one person meets all of the criteria for the panel) or as many persons as determined to be appropriate by the manager convening the panel. The panel must include the following individuals:
  - a management-appointed chairperson,
  - a person who is technically knowledgeable in the subject area being reviewed (this may also be the chairperson),
  - a panel member chosen by the ad hoc panel chairperson from the list of suggested panel members supplied by the submitter filing the DPO (where possible), and

~~—a panel member chosen by the Director of the Office of Price Anderson Enforcement if the subject of the DPO involves an Price Anderson enforcement issue,~~

- a panel member chosen by the General Counsel ~~or NNSA General Counsel~~ if the subject involves a legal issue ~~and their participation is requested by the assigned Secretarial Officer, Deputy Administrator, or FOM.~~<sup>6</sup>

6. AD HOC PANEL REVIEW. The ad hoc panel must do the following:

- a. Review the DPO to determine whether enough information has been supplied to undertake a detailed review of the issue and request any additional information needed from the submitter or from DOE or contractor management.
- b. Schedule and conduct a meeting with the submitter to discuss the scope of the issue within 10 calendar days from the date of the memorandum that establishes the ad hoc panel. The scope should remain fully focused on and should not exceed the issues as defined in the original written DPO.
- c. Establish a schedule of milestones for the disposition of the DPO.
- d. Request technical assistance through the ad hoc panel chair and the assigned Secretarial Officer, Deputy Administrator, or FOM, if necessary.
- e. Conduct a detailed review of the issues being brought forward and/or conduct any record reviews or interviews or hold any discussions the panel deems necessary to provide a complete, objective, independent, and impartial review.
- f. Conduct an independent review to the maximum extent possible. The review should include periodic discussions with the submitter to provide the submitter the opportunity to further clarify his or her views and to facilitate the exchange of information.
- g. Provide a written report, including recommendations and any dissenting opinions, to the assigned Secretarial Officer, Deputy Administrator, or FOM regarding the disposition of the issues presented in the DPO with a copy to the appropriate DPOM (or both DPOMs). The report should be provided within 30 calendar days of the appointment of the ad hoc panel unless an extension has been approved.

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<sup>6</sup> If the panel includes a member assigned by the General Counsel ~~or NNSA General Counsel~~, that member's involvement in the panel will be limited to the legal issues in the differing professional opinion (DPO). Because the DPO process is directed to technical, not legal, issues, the participation of a member of the General Counsel's ~~office-office or NNSA General Counsel's office~~ is not normally expected. ~~Field Local~~ counsel may also be used when requested by the ~~assigned~~ Secretarial Officer, Deputy Administrator, or FOM ~~and approved by the General Counsel or NNSA General Counsel~~.

- h. Some issues may be time sensitive. In those cases the assigned Secretarial Officer, Deputy Administrator, or FOM may direct the panel to provide a report on a shorter schedule when the ad hoc panel is assigned.
- 7. EXTENSIONS TO SCHEDULES FOR THE AD HOC PANEL REVIEW. The assigned Secretarial Officer, Deputy Administrator, or FOM may extend the review up to an additional 30 calendar days. Extensions beyond 30 calendar days require the approval of the Under Secretary (Deputy Secretary where there is no Under Secretary).
  - a. The approval must be documented and a copy of the approval memorandum extending the schedule must be sent to the appropriate DPOM (or both DPOMs) who must file it with the DPO records.
  - b. The DPOM also must send a copy of the approval memorandum extending the schedule to the submitter of the DPO.
- 8. FINAL DECISION.
  - a. The assigned Secretarial Officer, Deputy Administrator, or FOM must provide the Final Decision (including a documented basis for the decision) to the submitter of the DPO within 10 working days of receipt of the panel's final recommendations. Copies of the Final Decision must be sent to:
    - (1) the submitter's management (if different from the assigned Secretarial Officer, Deputy Administrator, or FOM),
    - (2) the DPOM,
    - (3) any individuals or organizations tasked with followup actions or implementation, and
    - (4) each of the panel members.
  - b. The decision memorandum should include appropriate recognition of the submitter's efforts if deemed appropriate by the assigned Secretarial Officer, Deputy Administrator, or FOM.
  - c. If the assigned Secretarial Officer, Deputy Administrator, or FOM decides to take an action other than recommended by the ad hoc panel, the Under Secretary (or the Deputy Secretary if there is no Under Secretary) must concur on the decision.
  - d. For any action required by the decision, the action must receive the concurrence of a line manager authorized to take the action or direct the action to be taken.

- e. If DOE management determines that the recommended actions will not be implemented or that alternate actions will be implemented, the DPOM will be informed and those decisions will be tracked and recorded through the DPO process.

9. SUBMITTER'S REVIEW OF THE FINAL DECISION.

- a. A submitter who is not satisfied with the Final Decision and continues to believe that a significant technical issue related to ES&H is not being properly addressed, must contact the DPOM within 5 working days of receiving the Final Decision to request a meeting and discussion with the assigned Secretarial Officer, Deputy Administrator, or FOM or his/her designee. That meeting must be held within 10 working days of the request.
- b. As a result of the meeting, the assigned Secretarial Officer, Deputy Administrator, or FOM may decide to change his/her decision. If so, that revised decision must be issued, filed, and ~~copied~~ distributed consistent with the Final Decision, including copies to any individuals or organizations tasked with new followup actions or implementation as a result of the change. In addition, any followup actions that are being retracted must be documented and the documentation sent to the individuals or organizations tasked with the original followup actions or implementation. Consideration must be made for any followup actions that may have been partially or fully completed during the interim.
- c. Alternatively, as a result of the meeting, the individual responsible for submitting the DPO may decide that he/she is satisfied with the results of the review and no further actions are needed. In that case the submitter should send a memorandum to the appropriate DPOM (or DPOMs) with a copy to the assigned Secretarial Officer, Deputy Administrator, or FOM closing the issue.
- d. If following the meeting the submitter continues to believe that the Final Decision does not adequately resolve the issue the submitter should initiate an appeal to the DPO decision.

10. FILING A DPO APPEAL.

- a. The submitter may file an appeal to a Final Decision on a DPO no later than 21 working days after the Final Decision is issued. The appeal must be addressed and sent to the appropriate Under Secretary (Deputy Secretary where there is no Under Secretary) with a copy to the appropriate DPOM (or DPOMs~~S~~) and the assigned Secretarial Officer, Deputy Administrator, or FOM. The DPO appeal must include an explanation of why the submitter still believes that the decision is inadequate or insufficient to ensure protection of ES&H. The DPO appeal must also include the DPO tracking number.

- b. Upon receiving an appeal, the DPOM must forward a copy of the file on the DPO to the Under Secretary including the supporting information and a copy of the Final Decision.

11. APPEAL DECISION.

- a. An Appeal Decision must be issued by the Under Secretary (Deputy Secretary where there is no Under Secretary), as appropriate, no later than 60 calendar days after receipt of the appeal.
- b. The official making the Appeal Decision may reconvene the panel, choose and use a new panel or make the decision without benefit of a panel.
- c. Copies of the Appeal Decision, along with any reports, must be provided to the assigned Secretarial Officer, Deputy Administrator, or FOM for the DPO, the appropriate DPOM (or DPOMs), and individuals or organizations tasked with followup or implementation actions.
- d. Upon issuance of the decision to the ~~file~~submitter, the DPO process will be concluded and the matter will be considered closed.

12. RECORDKEEPING REQUIREMENTS. The assigned Secretarial Officer, Deputy Administrator, or FOM must retain the records for a DPO until the DPO Final Decision has been issued at which time the assigned Secretarial Officer, Deputy Administrator, or FOM must forward the complete case file to the appropriate DPOM (or both DPOMs) for record keeping. The DPOM must retain the file for a minimum of 75 years. ~~A copy of the panel report and the decision memorandum must be sent to the Director of Price-Anderson Enforcement anytime a DPO ad hoc review panel includes a member chosen by the Director of Price-Anderson Enforcement.~~

13. WITHDRAWING A DPO. The submitter may withdraw the DPO (or appeal) at any time before the issuance of a Final Decision (or Appeal Decision). To initiate a withdrawal, the submitter must file a written request to the appropriate DPOM (or DPOMs), who will forward copies to the assigned Secretarial Officer, Deputy Administrator, or FOM (and Under Secretary/Deputy Secretary for an appeal). The DPOM must send an acknowledgment letter to the submitter indicating the date on which the withdrawal took effect. Withdrawal does not preclude the assigned Secretarial Officer, Deputy Administrator, or FOM (or to the Under Secretary or Deputy Secretary for an appeal) or other assigned Departmental representatives, from pursuing the issue, but the continued pursuit of the issue will no longer be subject to DPO process rules and/or time frame requirements. ~~If DOE decides not to pursue a withdrawn DPO, the DPOM will enter a memorandum in the file documenting the basis for the decision not to pursue the issue.~~

14. TRACKING AND FOLLOWUP ACTIONS.

- a. The DPOM must assign a control number to track each DPO. That number must be included on all correspondence on that DPO, including the confirmation the



DPOM sends to the submitter of the DPO to inform that person that the DPO has been received and is being processed. This control number will be used to track the DPO throughout the process, as well as any appeal that may arise. All parties must provide a copy of any official correspondence on that DPO (including e-mail where appropriate) to the appropriate DPOM (or DPOMs).

- b. The DPOM must track each DPO to conclusion and send reminder e-mails to individuals who are 5 working days behind schedule.
- c. The DPOM must record any followup actions identified by the decisions resulting from the DPO process.
- d. The assigned Secretarial Officer, Deputy Administrator, or FOM is responsible for ensuring that these actions are assigned to the proper authority and entered on local tracking systems with scheduled completion dates.
- e. In establishing completion dates, consideration must be given to the safety significance of the issue, the age of the issue, and the priority of other work in the office. If the schedule for the followup items is not met, the reason for the delay and a revised schedule for completion of the actions must be communicated to the submitter and to the applicable Under Secretary (or in cases where there is no assigned Under Secretary, to the Deputy Secretary).

15. PROTECTION FROM RETALIATION FOR FILING A DPO.

- a. As stated in DOE P 442.12, it is DOE policy to protect employees from retaliation in any form for filing DPOs.
- b. Additional protection is provided by the following:
  - (1) 5 U.S.C. § 2302 contains specific language prohibiting individuals from taking adverse personnel action with respect to any Federal employee or applicant for employment because of disclosure of information **which the employee reasonably believes evidences a violation of law, rule or regulation; gross mismanagement; gross waste of funds; an abuse of authority; or a substantial and specific danger to public health and safety if the disclosure is not specifically prohibited by law or by Executive Order in the interest of national defense or the conduct of foreign affairs.**
  - (2) **Sec. 211 of the Energy Reorganization Act, as amended, codified at 42 U.S.C. Sec. 5851, provides DOE and DOE contractor or employees specific whistleblower protection.**
  - (3) 10 CFR Part 708 provides procedures for processing complaints by employees of DOE contractors alleging retaliation by their employers for disclosure of information concerning danger to public or worker health or safety (among other things).

- c. Reprisals against contractor employees may also lead to the imposition of penalties ~~under the Price Anderson Amendments Act of 1988 (Pub. L. 100-49, August 20, 1988) implemented~~ under 10 CFR Part 820 ~~(Part 820)~~ or 10 CFR 851. ~~Pursuant to Part 820, to the extent a reprisal by a DOE Contractor results from an employee's involvement in matters of nuclear safety in connection with a DOE nuclear activity, the reprisal could constitute a violation of a DOE Nuclear Safety Requirement~~
- d. Furthermore, employees are to be commended for taking the often difficult and uncomfortable step of going outside the mainstream to file a DPO. In the event the DPO identifies a significant safety issue that might otherwise have gone overlooked, managers should openly recognize the contribution of the employee to ES&H. ES&H issues gone unnoticed can result in far more costly situations (both in money and lives) than the cost of correcting the deficiency in a timely manner.



**SAMPLE DIFFERING PROFESSIONAL OPINION SUBMITTAL FORM**

<p align="center"><b>Differing Professional Opinion (DPO) Submittal</b></p> <p>Respond to the questions below or attach responses. Attach copies of references. Submit the completed form to the DPO manager (DPOM). See DOE M 442.1-1 <del>4</del>for instructions.</p>
<p><b>TO BE ENTERED BY DPOM</b></p> <p><b>DPO Title:</b></p> <p><b>DPO tracking number:</b></p>
<p>Do you believe this issue involves a risk of imminent danger that would warrant an immediate stop work or a shutdown? <input type="checkbox"/> YES or <input type="checkbox"/> NO</p>
<p>1. What is the issue?</p>
<p>2. What is your recommended action?</p>
<p>3. What could happen if there is no change in position? (Note: Include a sound technical basis for the issue.)</p>
<p>4. Who would you recommend to be assigned to the ad hoc panel to review the DPO?</p>
<p>5. What should the ad hoc panel members read to help them resolve the issue?</p>

**SAMPLE DIFFERING PROFESSIONAL OPINION SUBMITTAL FORM (continued)**

6. What else have you tried to resolve the issue (review and comments, discussions with technical personnel and management, local DPO processes, etc.) and what were the results?

7. This DPO involves (check the applicable box)—

- ☐ NNSA facilities and/or activities.
- ☐ Non-NNSA facilities and/or activities.
- ☐ Both NNSA and non-NNSA facilities and/or activities.

Name:

Date:

Organization:

Position or Relationship to DOE:

☐ DOE employee      ☐ DOE contractor      ☐ DOE subcontractor

Phone number:

E-mail address:

Complete mailing address:

Best way to contact you for additional information:

Signature:

**SIMPLIFIED STEPS OF A DIFFERING PROFESSIONAL OPINION (DPO) PROCESS**

<b>RESPONSIBLE PARTY</b>	<b>ACTION</b>	<b>TIME FRAME</b>
DPO Submitter	Submit proposed DPO to DPO Manager (DPOM).	As needed
DPOM	Perform acceptance review.	Within 10 working days
Under Secretary (Deputy Secretary where there is no Under Secretary) as appropriate	Assign DPO to appropriate Secretarial Officer (SO), Deputy Administrator (for NNSA facilities and activities), or field office manager (FOM).	Within 10 working days
Assigned SO, Deputy Administrator or FOM	Appoint Ad Hoc Panel and designate chair.	Within 10 working days
Ad Hoc Panel	Review DPO and provide recommendations in a report to the SO or FOM.	Within 30 calendar days (unless extension is approved)
Assigned SO, Deputy Administrator, or FOM	Review Ad Hoc Panel Report and send Final Decision to DPO submitter with copy to DPOM.	Within 10 working days



### **SIMPLIFIED STEPS OF A DPO APPEAL**

<b>RESPONSIBLE PARTY</b>	<b>ACTION</b>	<b>TIME FRAME</b>
DPO Submitter	Contact DPOM to request a meeting and discussion with the assigned Secretarial Officer, Deputy Administrator, or FOM.	Within 5 days after receiving the DPO Final Decision
Assigned Secretarial Officer, Deputy Administrator, or FOM	Meet with DPO submitter and discuss the Final Decision.	Within 10 days of the DPOM receiving the request for a meeting.
DPO Submitter	Initiate an appeal by sending a letter to the Under Secretary.	Within 21 working days after the Final Decision.
Under Secretary (Deputy Secretary where there is no Under Secretary)	Review DPO and supporting information and issue Appeal Decision.	Within 60 calendar days after receipt of the appeal.